

SUPREME COURT NO. 99581-8
COURT OF APPEALS NO. 80024-8-I

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

State of Washington,
Petitioner

v.

Charmarke Abdi-Issa,
Respondent

ON REVIEW FROM
THE COURT OF APPEALS OF THE STATE OF
WASHINGTON

**BRIEF OF *AMICI CURIAE* ANIMAL LEGAL DEFENSE
FUND & ASSOCIATION OF PROSECUTING
ATTORNEYS
IN SUPPORT OF PETITIONER**

Adam P. Karp (WSBA # 28622)
Animal Law Offices of Adam P. Karp 114 W. Magnolia St., Ste.
400-104 || Bellingham, WA 98225-4354
adam@animal-lawyer.com

David B. Rosengard (OSB # 154119) & Kathleen M. Wood
(OSB # 174915)
Animal Legal Defense Fund 3439 NE Sandy Blvd. #470 ||
Portland, OR 97232 drosengard@aldf.org || kmwood@aldf.org

Counsel for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

INTEREST OF AMICI CURIAE 1

ISSUES PRESENTED 4

SUMMARY OF ARGUMENT 4

STATEMENT OF CASE..... 5

ARGUMENT 5

I. Fairbanks is a “victim” under the Sentencing Reform Act of 1981 5

 A. Malicious mischief primarily addresses financial injury..... 6

 B. Animal cruelty addresses the emotional and psychological injury to human victims..... 8

II. Because she is a Victim under the SRA, Fairbanks may also be Properly Considered a Victim under Domestic Violence Statutes..... 12

III. Whether Animals May Properly be Situated as Crime Victims Under Washington Law Is Not Presently Before The Court, and The Court Should Forbear From Ruling On The Matter 17

 A. The Issues Raised by Petitioner on Appeal Do Not Involve Animal Crime Victim Status..... 17

 B. To the Extent Lower Courts, Petitioner, or Respondent Describe Animal Cruelty as a "Victimless Crime," Those Characterizations Are Superfluous to the Legal Issues At Hand, and This Court Should Not Validate Them 18

C. <u>Particularly Given the Likelihood of Non-Statutory Animal Victim Status or Similar Legal Questions Properly Reaching This Court at a Later Date, Ruling On the Matter Now Would be Injudicious</u>	22
CONCLUSION	25

TABLE OF AUTHORITIES

Cases

Washington State:

Downey v. Pierce County

165 Wash.App. 152 (2011) 7

In re Marriage of Rideout

150 Wash.2d 337 (2003) 19

Repin v. State

198 Wash.App. 243 (2017) 7

Rhoades v. City of Battleground

115 Wash.App. 752 (2003) 7

State v. Abdi-Issa,

16 Wash. App. 2d 1040, review granted, 197 Wash. 2d
1016 (2021) 6, 13, 17

State v. Boisselle,

194 Wash. 2d 1 (2019) 19

Other Jurisdictions:

State v. Nix,

334 P.3d 437 (Or. 2014)

vacated on procedural grounds, 345 P.3d 416

(Or. 2015) 8, 11

State v. Fessenden,

355 Or. 759 (2014) 8, 24

State v. Hess,

359 P.3d 288, 290 (Or. Ct. App. 2015), <u>review denied</u> , 367 P.3d 529 (Or. 2016).....	8, 11
<u>People v. Harris</u> ,	
405 P.3d 361 (Colo. App. 2016).....	8

Statutes

Washington State:

Chapter 9.94A RCW	17
Chapter 10.99 RCW	17
Chapter 16.52 RCW	21
RCW 9.94A.030.....	6, 13, 18
RCW 9A.48.070.....	7
RCW 9A.48.080.....	7
RCW 9A.48.090.....	7
RCW 9A.48.100.....	7
RCW 10.99.010.....	13
RCW 10.99.020.....	13
RCW 10.99.040.....	16
RCW 16.52.011	20
RCW 16.52.085.....	24
RCW 16.52.117.....	20
RCW 16.52.205.....	20
RCW 16.52.207.....	20
RCW 26.50.010.....	18

Other Authorities

About HABRI, Mission and Vision: What is the Human-Animal Bond? Human-Animal Bond Research Institute, <https://habri.org/about/> (last accessed August 29, 2021)....9

American Veterinary Medical Association, U.S. Pet Ownership & Demographic Sourcebook (2012).....9

Benita J. Walton-Moss et al., Risk Factors for Interpersonal Violence and Associated Injury among Urban Women, 30-5 *JOURNAL OF COMMUNITY HEALTH*, 377 (2005) 15

Betty Jo Barrett et al., Animal Maltreatment as a Risk Marker of More Frequent and Severe Forms of Intimate Partner Violence, 26-1 *JOURNAL OF INTERPERSONAL VIOLENCE*, 1 (2017).....14, 15

Catherine A. Simmons & Peter Lehmann, Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships, 22-9 *JOURNAL OF INTERPERSONAL VIOLENCE*, 1211 (2007).....15

Catherine A. Faver & Elizabeth B. Strand, To Leave Or To Stay? Battered Women’s Concern For Vulnerable Pets, 18 *J. of Interpersonal Violence* 1367, 1374 (2003)..... 15

David Favre & Vivien Tsang, The Development of the Anti-Cruelty Laws During the 1800's, 1993 *DET. C.L. REV.* 1 (1993) available at https://www.animallaw.info/article/development-anti-cruelty-laws-during-1800s#N_24 (last accessed August 30, 2021)..... 11

Frank R. Ascione, Emerging Research on Animal Risk as a Risk Factor for Intimate Partner Violence, 8 (Kathleen A. Kendall-Tackett & Sarah M. Giacomini eds. 2007) 15

Marcy Wilhelm-South (2018), Pet Loss and Grief (HABRI Central Bibliography), available at <https://habricentral.org/resources/62995> (last accessed August 30, 2021)10

Marcy Wilhelm-South (2018), The Effects of Human-Animal Interaction on Human Health (HABRI Central Bibliography), available at <https://habricentral.org/resources/62912> (last accessed August 30, 2021)9

Mary Walsh, Feeding Fido: The Case for Restitution in Ohio Animal Cruelty Convictions, 26 Animal L. 417, (2020)10

National Link Coalition, www.nationallinkcoalition.org (last accessed August 30, 2021)14

Petition for Review, State v. Charmarke Abdi-Issa, Washington Supreme Court (No. 99581-8, 2021) 12, 16, 17

Shelby Elaine McDonald et al. Children’s Experiences of Companion Animal Maltreatment in Households Characterized by Intimate Partner Violence, CHILD ABUSE AND NEGLECT, 1 (2015)21

“Victim” Merriam-Webster.com, available at <https://www.merriam-webster.com/dictionary/victim> (last accessed September 1, 2021).....22

INTEREST OF AMICI CURIAE

The **Animal Legal Defense Fund** (“ALDF”) (www.aldf.org) is a non-profit organization that works to protect the lives and advance the interests of animals through the legal system. ALDF pursues its mission on behalf of its over 300,000 members and supporters across the country. ALDF files high-impact lawsuits to protect animals from harm, provides free legal assistance and training to judges and criminal justice practitioners to ensure that animal cruelty cases reach just outcomes, supports effective animal protection legislation, and fights legislation harmful to animals. ALDF recognizes the symbiotic relationship between animals and humans, particularly during times of stress and anxiety. ALDF has also worked since its inception to further the growth of animal law as a field and its application to common legal scenarios. Foundational to animal law is the notion that ‘animalness’—the simple fact that animals are creatures, not objects—has legally cognizable significance, which should be acknowledged by the law where applicable. ALDF’s litigation

goals, legislative efforts, and legal education support are often mutually reinforcing, as is the case here. The intersection points between domestic violence and animal cruelty—and how the law recognizes those crimes—speaks directly to relationships between humans and animals, and the ability of the law to safeguard the lives of both. The manner in which victim status does and does not apply to animals—the creatures directly harmed by animal cruelty crimes—goes directly to the degree to which the law reads animals as beings or objects.

The **Association for Prosecuting Attorneys** (“APA”) (www.apainc.org) is a non-profit group devoted to supporting and enhancing the effectiveness of prosecutors in their mission to create safer communities and to promote a more effective justice system. APA collaborates with criminal justice partners across the globe and advocates on behalf of prosecutors on emerging issues related to the administration of justice. APA understands all too well that domestic violence and animal abuse are inextricably linked. Individuals who abuse animals are far

more likely to commit other violent crimes. Batterers, whether of a spouse, a child, or an elderly person, will not hesitate to harm companion animals as a means to frighten and control family members. APA has active advisory committees that focus on both animal cruelty and domestic violence that consist of prosecutors, law enforcement, victim advocates, and other stakeholders on the frontline of these horrible crimes. These committees assist APA in providing assistance and training in the prosecution of animal cruelty and family violence, including the link between the two.

ISSUES PRESENTED

- (1) Can an animal's owner qualify as a victim of the crime of animal cruelty as defined by the Sentencing Reform Act?
- (2) Can animal cruelty constitute a crime of domestic violence as defined in RCW 10.99.010?

SUMMARY OF ARGUMENT

Julie Fairbanks had developed a human-animal bond with her dog Mona, who was criminally killed by the Respondent. Because of this bond, Fairbanks suffered emotional and psychological injuries as a direct result of the Respondent's crime. Fairbanks therefore fits the definition of a "victim" under RCW 9.94A.030.

Fairbanks was in an intimate relationship with the Respondent at the time of the crime. The crime of animal cruelty is closely related to domestic violence, and is often used as a tool to terrorize or control domestic violence victims. Therefore,

animal cruelty may constitute a crime of domestic violence as defined in RCW 10.99.010.

The issues presently before the Court do not require the Court to determine whether Mona was a victim of animal cruelty, beyond the statutory definition provided in the Sentencing Reform Act. Therefore, the Court should forbear from ruling on the issue of Mona's victim status.

STATEMENT OF CASE

Amici curiae ALDF and APA adopt the statement of the case as recited by Petitioner.

ARGUMENT

I. Fairbanks is a “victim” under the Sentencing Reform Act of 1981.

The Sentencing Reform Act of 1981 defines “victim” as “any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct

result of the crime charged.”¹ In this case, Julie Fairbanks suffered the loss of her dog Mona, who was both Fairbanks’s property and her beloved companion. This loss resulted in emotional, psychological, and financial injury. As the Appellate Court notes, the facts of this case would support multiple charges—namely, animal cruelty and malicious mischief.² Also, as the Appellate Court notes, charging malicious mischief would have addressed Fairbanks’s financial injury that she suffered due to the destruction of her property.³ However, the State chose not to charge malicious mischief and solely pursued the charge of animal cruelty. The decision to charge animal cruelty rather than malicious mischief best reflects the type of harm caused.

A. Malicious mischief primarily addresses financial injury.

Malicious mischief—while a valid and viable charge—

¹ RCW 9.94A.030(54).

² State v. Abdi-Issa, 16 Wash. App. 2d 1040, review granted, 197 Wn.2d 1016 (2021).

³ *Id.*

would not have addressed the most significant harms caused by the Respondent's actions. Malicious mischief, as a crime, is intended to address financial injury caused by damage and destruction of personal property.⁴ In this case, Mona was a seven-year-old "Chiweenie," a mix between a Chihuahua and Dachshund. She had no "fair market value" or "replacement value," if only due to the holdings of Rhoades v. City of Battleground⁵ and Downey v. Pierce Cy.⁶ As the criminal court would not be in a position to award restitution for intrinsic value, an artificial and insufficiently low measure might apply, consistent with an adoption fee that would run likely three, or

⁴ Each malicious mischief statute is based on the objective value of the property physically damaged or destroyed. (See RCW 9A.48.070 through 9A.48.100).

⁵ Rhoades v. City of Battleground, 115 Wash.App. 752, 766 (2003) (pets are not "fungible")

⁶ Downey v. Pierce Cy., 165 Wash.App. 152, 165 (2011) (accord), and Repin v. State, 198 Wash.App. 243, 284 (2017; Fearing, C.J., concurring) ("Many decisions, including Washington decisions, recognize the bond between animal and human and the intrinsic and inestimable value of a companion animal.")

even as little as one or two, figures. Accordingly, Fairbanks’s financial injury (again, from a criminal law standpoint) was relatively low. Comparatively, Fairbanks’s emotional and psychological harms were much greater. Therefore, it is more accurate to acknowledge Fairbanks as the victim of animal cruelty.

B. Animal Cruelty addresses psychological and emotional injury to human victims.

Even though animals are the primary victims of animal cruelty (in the plain meaning of the word)⁷, they are often not the only ones. Humans who care for their companion animals develop meaningful connections with their pets. In fact, 99% of

⁷ We recognize that the current statutory definition of the term “victim” for the purpose of the Sentencing Reform Act does not expressly include animals who are subjected to illegal cruelty. However, two states have held that animals are the clear victims of animal cruelty offenses *See State v. Nix*, 334 P.3d 437 (Or. 2014), vacated on procedural grounds, 345 P.3d 416 (Or. 2015), reasoning adopted by State v. Hess, 359 P.3d 288, 290 (Or. Ct. App. 2015), review denied, 367 P.3d 529 (Or. 2016); State v. Fessenden, 355 Or. 759 (2014); People v. Harris, 405 P.3d 361 (Colo. App. 2016).

Americans consider their pets as either family members or as companions, while only 1% view their pets as merely property.⁸ There are hundreds of studies documenting the effects of the human-animal bond.⁹ The “human-animal bond” refers to “a mutually beneficial and dynamic relationship between people and animals that is influenced by behaviors that are essential to the health and well-being of both... [and] includes, but is not limited to, emotional, psychological, and physical interactions of people, animals, and the environment.”¹⁰ Studies consistently demonstrate that the relationship between a human and a companion animal is deeply complex, emotional, and

⁸ American Veterinary Medical Association, U.S. Pet Ownership & Demographic Sourcebook (2012), finding that 35.8% of pet owners consider their animals to be “companions” and 63.2% consider their animal to be part of their family.

⁹ *See e.g.* Marcy Wilhelm-South (2018), The Effects of Human-Animal Interaction on Human Health (HABRI Central Bibliography), available at <https://habricentral.org/resources/62912> (last accessed August 30, 2021).

¹⁰ About HABRI, Mission and Vision: What is the Human-Animal Bond? Human-Animal Bond Research Institute, <https://habri.org/about/> (last accessed August 29, 2021).

psychological. Thus, when a person loses a companion animal, they not only lose their property, but they also suffer emotional and psychological injury.¹¹ As discussed above, the malicious mischief statutes are not equipped to restore a victim who has suffered this kind of damage. Therefore, these emotional and psychological damages are more accurately addressed under animal cruelty statutes.

The purpose of animal cruelty laws has evolved dramatically over the past century.¹² The first animal cruelty laws in this country were primarily focused on the animal's property interest.¹³ These laws often did not prohibit a person from cruelly mistreating their own animal; instead they only

¹¹ See e.g. Marcy Wilhelm-South (2018), Pet Loss and Grief (HABRI Central Bibliography), available at <https://habricentral.org/resources/62995> (last accessed August 30, 2021).

¹² Mary Walsh, Feeding Fido: The Case for Restitution in Ohio Animal Cruelty Convictions, 26 *Animal L.* 417, 421 (2020).

¹³ *Id.*

criminalized harming an animal belonging to another person.¹⁴

Early animal cruelty laws also typically focused on animals of high economic value, such as horses and cattle.¹⁵ However, over the past century, the law has evolved to recognize the sentience of animals, and now acknowledges that the primary purpose of animal cruelty laws is to prevent animals from enduring unnecessary pain and suffering.¹⁶

Because of the existence of the human-animal bond, an animal's pain and suffering caused by cruelty affects human

¹⁴ David Favre & Vivien Tsang, The Development of the Anti-Cruelty Laws During the 1800's, 1993 DET. C.L. REV. 1 (1993) available at https://www.animallaw.info/article/development-anti-cruelty-laws-during-1800s#N_24 (last accessed August 30, 2021).

¹⁵ *Id.*

¹⁶ State v. Nix, 334 P.3d 437 (Or. 2014); Note, while the *Nix* decision was subsequently reversed on the strictly procedural basis that the matter was not properly before the court, the substantive reasoning developed in *Nix* was later adopted in State v. Hess, so in effect, the *Nix* decision stands. State v. Nix, 334 P.3d 437 (Or. 2014), vacated on procedural grounds, 345 P.3d 416 (Or. 2015), reasoning adopted by State v. Hess, 359 P.3d 288, 290 (Or. Ct. App. 2015), review denied, 367 P.3d 529 (Or. 2016).

victims as well. As demonstrated by the record, Mona was worth considerably more to Fairbanks than any economic measure as conventionally applied under the criminal code. Fairbanks referred to Mona as her “baby” and “companion,” who helped her in times of stress.¹⁷ Her emotional and psychological injury stem from the fact that her companion animal—who she cared for, and was responsible for—was subjected to pain and suffering. Therefore Fairbanks’s emotional and psychological injuries were directly caused by the crime charged, and she falls squarely within the definition of “victim” under the Sentencing Reform Act.

II. Because she is a victim under the SRA, Fairbanks may also be properly considered a victim under domestic violence statutes.

The stated purpose of Washington’s domestic violence laws is to “recognize the importance of domestic violence as a

¹⁷ Petition for Review at 1, State v. Charmarke Abdi-Issa, Washington Supreme Court (No. 99581-8, 2021).

serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.”¹⁸ Failing to recognize this case of animal cruelty as a crime of domestic violence would be contrary to that stated purpose, and would deprive Fairbanks of the “maximum protection” that the law demands.

Washington’s definition of “domestic violence” includes *but is not limited to* the list of crimes enumerated in that statute, when committed by a family or household member, or an intimate partner.¹⁹ That list of crimes includes malicious mischief and other crimes against property. As discussed above, animal cruelty is a crime against property. Therefore, animal cruelty is precisely the type of crime enumerated in the definition of domestic violence.

More than that, animal cruelty is the type of crime that the

¹⁸ RCW 10.99.010

¹⁹ RCW 10.99.020.

domestic violence statutes are intended to target. There is a well-documented link between animal cruelty and domestic violence.²⁰ Threats or harm to companion animals are often used as a tool of domestic violence, in order to terrorize or control a domestic violence victim.²¹ In one study, 89% of domestic violence survivors who owned a companion animal during their relationship reported that their partner threatened, harmed, or killed their companion animal.²² Additionally, approximately half of domestic violence survivors report delaying escape from

²⁰ See generally National Link Coalition at www.nationallinkcoalition.org

²¹ Shelby Elaine McDonald et al. Children's Experiences of Companion Animal Maltreatment in Households Characterized by Intimate Partner Violence, CHILD ABUSE AND NEGLECT, 1 (2015).

²² Betty Jo Barrett et al., Animal Maltreatment as a Risk Marker of More Frequent and Severe Forms of Intimate Partner Violence, 26-1 JOURNAL OF INTERPERSONAL VIOLENCE, 1 (2017).

their abuser out of fear for their companion animal.²³ Abuse of a companion animal is one of the four most significant risk factors associated with someone committing domestic abuse,²⁴ and is an indicator of the use of controlling and violent behaviors.²⁵

In this case, the record supports the jury's finding that Fairbanks was in a domestic violence relationship with the

²³ Frank R. Ascione, Emerging Research on Animal Risk as a Risk Factor for Intimate Partner Violence, 8 (Kathleen A. Kendall-Tackett & Sarah M. Giacomoni eds. 2007); Catherine A. Faver & Elizabeth B. Strand, To Leave Or To Stay? Battered Women's Concern For Vulnerable Pets, 18 J. of Interpersonal Violence 1367, 1374 (2003); Betty Jo Barrett et al., supra note 22.

²⁴ Benita J. Walton-Moss et al., Risk Factors for Interpersonal Violence and Associated Injury among Urban Women, 30-5 JOURNAL OF COMMUNITY HEALTH, 377 (2005) (Other factors include low education levels, mental health issues, and substance abuse).

²⁵ Catherine A. Simmons & Peter Lehmann, Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships, 22-9 JOURNAL OF INTERPERSONAL VIOLENCE, 1211 (2007) (Study showed positive correlation between abuse of a pet and violent and controlling behaviors. Violent behaviors reported included physical and sexual violence, and stalking. Reported controlling behaviors included intimidation, blaming, threats, isolation, and emotional and economic abuse.)

Respondent. The record demonstrates that the Respondent used Fairbanks's relationship with Mona to exert control over Fairbanks, and that the Respondent threatened to kill and "took out his anger on" Mona and Fairbanks.²⁶ This domestic violence relationship culminated with the Respondent violently killing Mona, causing the Respondent to suffer immense emotional and psychological pain as a direct result.²⁷

The facts of this case typify the link between animal cruelty and domestic violence, closely corresponding with the studies' findings of behavioral and psychological trends as discussed above. Fairbanks is the type of domestic violence victim Chapter 10.99 RCW seeks to protect. As such, Fairbanks deserves the full measure of protections offered by RCW 10.99.040.

²⁶ Petition for Review at 2, State v. Charmarke Abdi-Issa, Washington Supreme Court (No. 99581-8, 2021).

²⁷ Id. at 8.

III. Whether Animals May Properly be Situated as Crime Victims Under Washington Law Is Not Presently Before The Court, and The Court Should Forbear From Ruling On The Matter.

A. The Issues Raised by Petitioner on Appeal Do Not Involve Animal Crime Victim Status.

The State of Washington, in seeking review of the Court of Appeals decision in *State v. Abdi-Issa*, No. 80024-8-I (February 16, 2021), raises but two issues of law, both of which come down to a single question: whether, when a perpetrator criminally kills an animal owned by his or her intimate partner, that intimate partner—who is the animal’s owner—qualifies as a victim of that criminal killing?²⁸ Whether animals harmed by acts of criminal cruelty are themselves victims of those criminal acts is not an issue raised on appeal. Indeed, the lower court limited itself to discussing the victim status of animals under specific statutes:

²⁸ Petition for Review at 1, *State v. Charmarke Abdi-Issa*, Washington Supreme Court (No. 99581-8, 2021).

RCW 9.94A.030²⁹ and RCW 10.99.020,³⁰ rather than whether there are any circumstances where an animal directly harmed by criminal cruelty in the State of Washington could constitute a crime victim.³¹

B. To the Extent Lower Courts, Petitioner, or Respondent Describe Animal Cruelty as a “Victimless Crime,” Those Characterizations Are Superfluous to the Legal Issues At Hand, and This Court Should Not Validate Them.

Resolving the matter before this court requires determining whether a human situated in the manner of Julie Fairbanks vis-à-vis Charmarke Abdi-Issa constitutes a “victim” for specific statutory purposes when that human’s companion animal is subject to a criminally cruel death at the hands of the human’s

²⁹ I.e. definition of ‘victim’ applicable to RCW Chapter 9.94A.

³⁰ I.e. definition of ‘domestic violence’ applicable to RCW Chapter 10.99.

³¹ See generally State v. Abdi-Issa, 16 Wash. App. 2d 1040, review granted, 197 Wash.2d 1016 (2021) (holding that animals are not ‘persons’ and therefore fall outside the statutory definitions of “victim” set forth in RCW 9.94A.030(54) and “family or household member” set forth in RCW 26.50.010(6), both of which limit themselves to “[a] person” RCW 9.94A.030(54)) or “persons” (RCW 26.50.010(6)).

intimate partner. This does not require the court to determine whether or not such a human is the only victim of the criminal animal cruelty involved, much less whether there are circumstances outside the scope of the relevant statutes where an animal subject to criminal cruelty would qualify as a victim of that crime. As such, were this Court to opine that animals are inherently incapable of being victims, or that unlawful cruelty committed against an unowned animal is a victimless crime, such statements would be dictum by virtue of having “no bearing on the decision... rendered.”³²

Introducing such unnecessary surplusage into Washington caselaw would be particularly prone to creating problematic ambiguity, given that Washington’s animal cruelty laws give

³² In re Marriage of Rideout, 150 Wash.2d 337, 354 (2003). Such dictum would, by its nature, tend to introduce unnecessary ambiguity into Washington law. State v. Boisselle, 194 Wash. 2d 1, 13 (2019) (“...this court does not accord a prior holding precedential weight where it is dictum and unnecessary surplusage ... this court may clarify any ambiguity the prior holding creates.”)

every indication of framing animals subject to conduct those laws criminalize as victims.

Washington's modern laws subjecting unlawful animal cruelty to criminal sanction have the core function of protecting animals on their own merits—not as a result of those animals being owned (or unowned) by humans. Were this not the case, the scope of Washington's laws against animal cruelty could simply stop at the shores of ownership: protecting only animals owned by another from a cruel conduct.³³ Washington's criminal cruelty laws are expansive: they shield “any nonhuman mammal, bird, reptile, or amphibian”³⁴ from a range of unlawful treatment at human hands, including “inflict[ion of] unnecessary suffering or pain”,³⁵ sexual assault,³⁶ exploitation in the bloodsport of

³³ See supra notes 12-16 and accompanying text (outlining development of modern animal cruelty law as having the core purpose of protecting animals from unacceptable suffering).

³⁴ RCW 16.52.011(b).

³⁵ RCW 16.52.207.

³⁶ RCW 16.52.205.

animal fighting,³⁷ and being intentionally killed “by a means causing undue suffering or while manifesting an extreme indifference to life.”³⁸ These protections apply whether the animal is owned by the perpetrator, owned by someone else, or owned by no one at all. Indeed, that Washington’s animal protection statutes are triggered by sufficient levels of animal pain or suffering underscores the point: the focus is not the economic value of a given animal (animals having no market value are protected with equal force), nor how useful the animal may be to humans (utility is not an element of any cruelty crime in Washington).³⁹

While Washington’s animal protection statutes address a range of harms generated by animal cruelty (and individuals impacted by those harms), the direct impact such unlawful

³⁷ RCW 16.52.117.

³⁸ RCW 16.52.205.

³⁹ See generally RCW Chapter 16.52: Prevention of Cruelty to Animals (defining elements of animal cruelty crimes in Washington State).

conduct has upon the animals involved is inherently and inexorably within the purview of those laws. Washington animal protection law thus does not frame animals as a means to an end, but rather as an end in and of themselves: the focal point is the experience of animals harmed by acts of unlawful cruelty. This is not a level of analysis brought to bear where crimes lack victims. For crimes where the harm is to *things* rather than *beings*, the law does not ask what the harmed object's experience was, nor could it—experiences are the domain of living, feeling creatures.

C. Particularly Given the Likelihood of Non-Statutory Animal Victim Status or Similar Legal Questions Properly Reaching This Court at a Later Date, Ruling On the Matter Now Would be Injudicious.

That animals harmed by maltreatment criminalized under Washington's Prevention of Cruelty to Animals law are victims is evident with near tautological force: to be directly harmed by

a crime is to be a victim of that crime.⁴⁰ This is all the more so when those harms are visited on the category of beings the criminal law in question is aimed at protecting. None of this, of course, constrains the Washington legislature’s ability to situate animals outside a valid set of victims for the purposes of particular statutes. But neither does the legislature’s choice to exclude animals when crafting statute-specific definitions of “victim” imply that animals cannot be victims in contexts not governed by those statutes.

Indeed, we need not look far afield to find courts grappling questions of animal victim status outside of a statutory context. In *State v. Fessenden*, for example, the Oregon Supreme Court considered whether law enforcement entering private property sans warrant to seize and transport to veterinary care an animal

⁴⁰ See e.g. Merriam-Webster Dictionary defining “victim” as “one that is acted on and usually adversely affected by a force or agent.” “Victim” Merriam-Webster.com, available at <https://www.merriam-webster.com/dictionary/victim> (last accessed September 1, 2021).

whose life was imminently endangered by criminal animal cruelty sufficiently gave rise to a seizure exception. In finding that the seizure was reasonable under Oregon’s formulation of the exigent circumstances exception, the court explicitly grounded its holding by recognizing animals subject to criminal cruelty as victims—all without reliance to statutes delineating the bounds of victimhood.

An officer who has probable cause to believe that a perpetrator is in the process of causing unlawful harm [to a victim] has a responsibility to ... prevent the perpetrator from causing further imminent harm to the victim.... [—including when] the victim of the crime [is] an animal entitled to statutory protection.⁴¹

Fortunately, Washington has, in anticipation of this very issue, included an emergency aid provision in its animal cruelty laws.⁴² However, as countless cases have demonstrated, it is impossible for the legislature to account for every possibility. It is entirely possible, if not probable, that the determinative issue of animal

⁴¹ State v. Fessenden, 355 Or. 759, 773 (2014).

⁴² RCW 16.52.085.

victimhood will arise in the state of Washington, just as it has in numerous other jurisdictions. In the present case, it is sufficient to recognize that animal victim status is not a matter properly before this court in the instant case, that unresolved questions regarding animal victim status persist, and that, subsequently, the judicious approach is for this court to forgo ruling on such matters until a case that properly raises them comes before the court.

CONCLUSION

Because of the foregoing arguments, we respectfully request that the Washington Supreme Court reverse the decision of the Washington Court of Appeals, and find that (1) Julie Fairbanks qualifies for victim status under the Sentencing Reform Act; and (2) the crime of animal cruelty may properly be considered a crime of domestic violence. We also respectfully request that the Court avoid ruling on the victim status of animals beyond the bounds of the definition provided in the Sentencing Reform Act.

DATED September 3, 2021.

This document contains 3,981 words, excluding the parts of the document exempted from the word count by RAP 18.17

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'Karp', with a long horizontal flourish extending to the right.

Adam P. Karp (WSBA # 28622)
Animal Law Offices of Adam P. Karp
114 W. Magnolia St., Ste. 400-104
Bellingham, WA 98225-4354
adam@animal-lawyer.com

David B. Rosengard (OSB # 154119) & Kathleen M. Wood
(OSB # 174915)
Animal Legal Defense Fund 3439 NE Sandy
Blvd. #470 || Portland, OR 97232 drosengard@aldf.org ||
kmwood@aldf.org

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I certify that on September 3, 2021, I caused to have served an original and one copy of **BRIEF OF AMICI CURIAE ANIMAL LEGAL DEFENSE FUND IN SUPPORT OF PETITIONERS** upon the Clerk of the Supreme Court of Washington, and one true and correct copy upon the following by the method(s) indicated below:

Caroline Djamalov Email: cdjamalov@kingcounty.gov 516 3rd Ave Rm W400 Seattle, WA 98104-2388	<input type="checkbox"/> Hand Delivery
	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
	<input checked="" type="checkbox"/> Email/ACORDS
	<input type="checkbox"/> Facsimile
Casey Grannis, Attorney for Respondent Email: grannisc@nwattorney.net 1908 East Madison Seattle, WA 98122	<input type="checkbox"/> Hand Delivery
	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid
	<input checked="" type="checkbox"/> Email/ACORDS
	<input type="checkbox"/> Facsimile

Dated this 3rd day of September 2021, at Seattle, Washington.

ANIMAL LAW OFFICES OF ADAM P. KARP



Adam P. Karp (WSBA # 28622)

Counsel for *Amici Curiae*